(18,494.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 302.

UNITED STATES FIDELITY AND GUARANTY COMPANY

vs.

UNITED STATES, FOR THE USE AND BENEFIT OF THE GOLDEN PRESSED AND FIRE BRICK COMPANY, AND THE GOLDEN PRESSED AND FIRE BRICK COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the eighth circuit	1	1
Statement of facts	1	1
Bond sued on	2	1
Questions certified	6	3
Judges' certificate	6	4
Clerk's certificate	8	4

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 20, 1903.

1 United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES FIDELITY & GUARANTY Company, Plaintiff in Error, *vs.* UNITED STATES OF AMERICA, for the Use and Benefit of The Golden Pressed & Fire Brick Company, and The Golden Pressed & Fire Brick Company, Defendants in Error.	On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on this 24th day of March 1902, hereby certifies that upon the record on file in said court, in the above-entitled cause, wherein The United States Fidelity & Guaranty Company is plaintiff in error and The United States of America, for the use and benefit of the Golden Pressed & Fire Brick Company are defendants in error, and which said cause is now pending before this court on a writ of error to the circuit court of the United States for the district of Colorado, the following facts appear, namely: That the United States of America, for the use and benefit of the Golden Pressed & Fire Brick Company, brought an action in the circuit court of the United States for the district of Colorado against John A. McIntyre and the United States Fidelity &
2 Guaranty Company upon a bond executed April 11, 1898, which bond was given in pursuance of an act of Congress, approved August 13, 1894, (28 Statutes 278, c. 280), to secure the performance of a contract theretofore entered into by said John A. McIntyre, with the United States, to furnish all the labor and materials and do all the work required for the foundation, superstructure and roof covering of the United States mint building in the city of Denver State of Colorado. Said bond was in the following form.

"Know all men by these presents, that we, John A. McIntyre, of the city of Denver, county of Arapahoe, and State of Colorado, principal, and the United States Fidelity and Guaranty Company, (—) State of Maryland, and —— —— of the city of ——, county of ——, and State of ——, sureties, are held and firmly bound unto the United States of America in the sum of one hundred twenty-four thousand (124,000) dollars, lawful money of the United States, for the payment of which, well and truly to be made, to the United States, we bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

"Sealed with our seals and dated this eleventh day of April, A. D. 1898.

"The condition of the above obligation is such, that whereas the said John A. McIntyre has entered into a certain contract hereto attached, with L. J. Gage, Secretary of the Treasury, acting for and in behalf of the United States, bearing date the twenty-ninth day of March, A. D. 1898; now, if the said John A. McIntyre shall well

and truly fulfill all the covenants and conditions of said contract, and shall perform all the undertakings therein stipulated by him to be performed, and shall well and truly comply with and
3 fulfill the conditions of and perform all of the work and furnish all the labor and materials required by any and all changes in or additions to said contract which may hereafter be made, and shall perform all the undertakings stipulated by him to be performed in any and all such changes in or additions thereto, notice thereof to the said sureties being hereby waived, and shall promptly make payment to all persons supplying him labor or material in the prosecution of the work contemplated by said contract, then this obligation to be void; otherwise to remain in full force and virtue.

"In testimony whereof, the said John A. McIntyre, principal, and the United States Fidelity and Guaranty Company, and —— —— sureties, have hereunto subscribed their hands and affixed their seals the day first above written.

JOHN A. McINTYRE. [SEAL.]
THE UNITED STATES FIDELITY & GUARANTY COMPANY.
EDW. J. PENNIMAN, [SEAL.]
Second Vice-Pres'd't.
ARTHUR E. PIERCE, *Ass't Sec't'y.*"

The complaint showed, in substance, that the United States Fidelity & Guaranty Company is a corporation organized under the laws of the State of Maryland and at the time of the execution of the aforesaid bond, was duly authorized by the Attorney General of the United States, to do business under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon," (28 Stat., 279, c. 282) beyond the limits of the State of Maryland, and that said company had, prior to the making of the aforesaid bond, appointed an agent residing in the State of Colorado and was authorized to
4 become surety upon bonds required by the statutes of the United States to secure the performance of contracts entered into for the construction of any public building or other improvement in the State of Colorado; that between June 16, 1898 and May 15, 1899, the Golden Pressed & Fire Brick Company, for whose use and benefit the action was brought, had sold and delivered to John A. McIntyre, the contractor for the construction of said mint building, a certain quantity of brick which had been accepted by the superintendent in charge of the construction of said mint building and had been used by said McIntyre in the construction of the same, which brick, so furnished, were of the reasonable value of $6517.55; that certain payments had been made on account of the brick so sold and delivered but that there was due to the Golden Pressed & Fire Brick Company, at the time the action was brought, on account of brick so sold and delivered, the sum of $2711.65.

The United States Fidelity & Guaranty Company, among other

defenses to the action, pleaded the following: That on October 1, 1898, there was due and payable to the Golden Pressed & Fire Brick Company, hereafter sometimes termed the brick company, from John A. McIntyre, contractor, on account of brick furnished for and used in the construction of said mint building at Denver, under the contract between the brick company and McIntyre, in virtue of which the brick were furnished, a balance of $3787.00; that on October 1, 1898, the brick company, without the knowledge or consent of the United States Fidelity & Guaranty Company, hereafter sometimes termed the guaranty company, granted to McIntyre, an extension of the time of payment of the balance then due on account of the purchase price of said brick, to wit: an extension of time for thirty days from October 1, 1898, as respects $1275.00 of said account and an extension of
5 sixty days from September 15, 1898, as respects the balance of said account, the consideration of such extension of the time of payment being, that McIntyre would execute and deliver to the brick company, his two promissory notes, one in the sum of $1275.00 payable thirty days after date, and one in the sum of $2508.10, payable sixty days after September 15, 1898, both of said notes bearing interest at the rate of ten per cent. per annum from date; that in accordance with said agreement said notes were executed by said McIntyre and delivered to and accepted by the brick company; that one of said notes, being the one for the sum of $1275.00, was afterwards paid, before the institution of any suit; and that the balance of the alleged indebtedness, sued for by the United States for the use of the brick company, was a part and portion of the balance of $3787.00, which was due and payable by McIntyre to the brick company on October 1, 1898, the time for the payment of which had been extended by the brick company, in the manner heretofore stated, without the knowledge or consent of the guaranty company. There was no allegation that, by reason of the extension of the time of payment of the sum due on October 1, 1898, in the manner and form aforesaid, the United States Fidelity & Guaranty Company has sustained any actual loss or injury, but, by reason of such extension, in the manner and form stated, the United States Fidelity & Guaranty Company alleged that it had been thereby released and discharged from any and all further liability upon said bond, as respects the indebtedness sued for.

The circuit court held that the extension of the time of payment of the indebtedness sued for, in the manner and form above stated, did not operate to discharge the United States Fidelity & Guaranty Company from liability to pay said indebtedness.

6 And the United States circuit court of appeals hereby certifies that to the end that it may properly decide said case, it desires the instruction of the Supreme Court of the United States upon the following questions or propositions of law, arising therein, which are duly raised and presented to it by the record in said case.

First. Did the action of the brick company on October 1, 1898, in taking two promissory notes, one for the sum of $1275.00 and the other for the sum of $2508.10, for the amount of the brick com-

pany's account, then due and payable, one of said notes running for thirty days and the other for sixty days, and each bearing ten per cent. interest per annum from date, operate to discharge the United States Fidelity & Guaranty Company from its liability, assumed under the provisions of the aforesaid bond, to pay to the Golden Pressed & Fire Brick Company, the amount of said indebtedness?

Second. Did the extension of the time of payment of the balance due from said McIntyre, on October 1, 1898, by the taking of two notes in the manner and form aforesaid, operate to discharge the United States Fidelity & Guaranty Company of its liability to pay the amount of said indebtedness to the brick company, irrespective of the question whether said guaranty company did or did not sustain an actual loss or damage on account of such extension?

In witness whereof, the undersigned, judges of the said United States circuit court of appeals, for said eighth circuit, have hereunto set their hands this 24 day of March A. D. 1902 at St. Louis, Missouri, and hereby order and direct that the foregoing certificate be filed in said United States circuit court of appeals and by the
7 clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL.
WALTER H. SANBORN.
AMOS M. THAYER.

8 United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of United States Fidelity and Guaranty Company, plaintiff in error, *vs.* United States of America, for the use and benefit of The Golden Pressed and Fire Brick Company, and The Golden Pressed and Fire Brick Company, defendants in error, No. 1589, December term, 1901, was duly filed and entered of record in my office by order of said court and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this twenty-fourth day of March, A. D. 1902.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Filed Mar. 24, 1902.

JOHN D. JORDAN, *Clerk.*

Endorsed on cover: (Certificate.) File No. 18,494. U. S. C. C. of appeals, eighth circuit. Term No. 302. United States Fidelity and Guaranty Company, plaintiff in error, *vs.* United States of America, for the use & benefit of The Golden Pressed & Fire Brick Company, & The Golden Pressed & Fire Brick Company. Filed April 14, 1902.